

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SARAH WALKER,

Plaintiff,

vs.

No. CIV 09-0060 JB/KBM

THI OF NEW MEXICO AT HOBBS CENTER d/b/a
HOBBS HEALTH CARE CENTER, DIANA
MELTON, JAIME ANDUJO, DEBBIE
LOTHRIDGE, KAREN HOOD (MILLER),
THI OF NEW MEXICO, LLC, FUNDAMENTAL
CLINICAL CONSULTING, LLC, FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC,
THI OF BALTIMORE, INC., and FUNDAMENTAL
LONG-TERM CARE HOLDINGS, LLC,

Defendants,

and

THI OF NEW MEXICO AT HOBBS CENTER, LLC,
THI OF NEW MEXICO, LLC, FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC, AND
FUNDAMENTAL CLINICAL CONSULTING, LLC,

Counter-Plaintiffs,

vs.

SARAH WALKER,

Counter-Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendants' Motion to Stay Deposition Discovery, filed February 4, 2011 (Doc. 188)(“Motion to Stay”). The Court held a hearing on April 29, 2011. The primary issue is whether the Court should enter a stay of discovery and depositions in this matter until thirty days after it rules on the motions to dismiss that Defendants THI of

Baltimore, Inc. (“THI of Baltimore”) and Fundamental Long Term Care Holdings, LLC (“FLTCH”) filed. The Court will deny the Motion to Stay.

PROCEDURAL BACKGROUND

Plaintiff Sarah Walker filed this case on January 22, 2009. See Complaint, filed January 22, 2009 (Doc. 1). The Complaint originally named Defendant THI of New Mexico at Hobbs Center d/b/a Hobbs Health Care Center (“THI of Hobbs”) and three Doe Corporations as Defendants. See Complaint ¶¶ 4-5, at 2. On December 14, 2009, Walker filed an Amended Complaint adding Defendants Diana Melton, Jaime Andujo, Debbie Lothridge, Karen Hood (Miller), THI of New Mexico, Fundamental Clinical Consulting, LLC (“FCC”), and Fundamental Administrative Services, LLC (“FAS”). See Amended Complaint, filed December 14, 2009 (Doc. 50). On November 15, 2010, Walker filed a Second Amended Complaint, adding THI of Baltimore and FLTCH as Defendants. See Doc. 142 (“SAC”). In her SAC, Walker alleges that “THI-Hobbs and all the other Corporate Defendants acting as a single, integrated enterprise subjected [Walker] to race discrimination and/or to retaliation for having complained internally about race discrimination” in violation of Title VII, 42 U.S.C. §§ 2000e through e-17, and of the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 through -15. SAC ¶¶ 79-80, at 23-24. Walker alleges that the Defendants’ conduct violated her rights under 42 U.S.C. § 1981 and “constituted an intentional infliction of emotional distress.” SAC ¶ 81, at 24. She also alleges that the Defendants’ conduct in terminating her constituted an unlawful breach of her employment contract. See SAC ¶ 82, at 24.

On February 4, 2011, THI of Hobbs, THI of New Mexico, FAS, and FCC (hereinafter “the Defendants”) filed a Motion to Stay Deposition Discovery. See Doc. 188. The Defendants ask the Court to stay deposition discovery until thirty days after the Court decides THI of Baltimore’s and FLTCH’s motions to dismiss, which will determine whether those Defendants will remain in the suit

and participate in discovery. The Defendants assert that, without a stay of discovery pending decisions on the motions to dismiss, duplicative deposition discovery will be guaranteed if the Court rules that either THI of Baltimore or FLTCH must remain in the case.

On March 21, 2011, Walker filed the Plaintiff's Response to Defendants' Motion to Stay Deposition Discovery. See Doc. 242. Walker argues that the Court has extended the deadline for completion of discovery to September 15, 2011 and that there is thus sufficient time for the newly added Defendants to "get up to speed and fully participate in the depositions." Response at 2. She argues that granting the Defendants' requested stay could prevent all the depositions from being scheduled before September 15, 2011, necessitating the Court to again reschedule the trial and pre-trial deadlines. Walker stated that, to accommodate THI of Baltimore's and FLTCH's concerns about waiving their rights, if THI of Baltimore and FLTCH insist on their counsel attending the depositions, she will not consider THI of Baltimore's and FLTCH's participation to be a waiver of their challenge to personal jurisdiction.

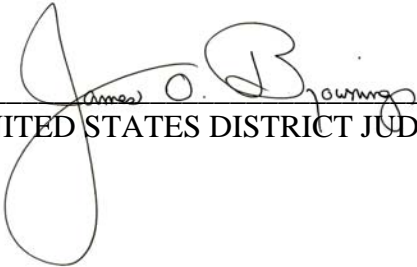
On April 15, 2011, the Defendants filed the Defendants' Reply in Support of Motion to Stay Deposition Discovery. See Doc. 267. In their reply, the Defendants reiterated the arguments set forth in their motion.

ANALYSIS

The Court will deny the Motion to Stay. The Court does not see a benefit to staying discovery. The parties will have to make decisions as to which depositions they wish to attend. If the Court stayed deposition discovery until thirty days after it ruled on THI of Baltimore's and FLTCH's motions to dismiss, it would delay this case, which is from 2009, even further. Counsel for THI of Baltimore and FLTCH has represented to the Court's Courtroom Deputy that she will not participate in the deposition discovery. There is thus no benefit to staying deposition discovery, and

staying deposition discovery would further delay the case. For these reasons, and the reasons stated on the record at the hearing, the Court will deny the Motion to Stay.

IT IS ORDERED that the Defendants' Motion to Stay Deposition Discovery, filed February 4, 2011 (Doc. 188), is denied.



UNITED STATES DISTRICT JUDGE

Counsel:

Daniel Yohalem
Richard Rosenstock
Santa Fe, New Mexico

-- and --

Katherine E. Murray
Santa Fe, New Mexico

Attorneys for the Plaintiffs

Danny Jarrett
Trent A. Howell
Jackson Lewis, LLP
Albuquerque, New Mexico

-- and --

Lori D. Proctor
Johnson, Trent, West & Taylor, LLP
Houston, Texas

*Attorneys for Defendants THI of New Mexico at
Hobbs Center, LLC and THI of New Mexico, LLC*

Barbara G. Stephenson
Quentin Smith
Sheehan & Sheehan, P.A.
Albuquerque, New Mexico

*Attorneys for Defendants Fundamental Administrative Services, LLC,
Karen Hood (Miller), Debbie Lothridge, and Diana Melton*

John A. Bannerman
Margaret A. Graham
Bannerman & Johnson, P.A.
Albuquerque, New Mexico

*Attorneys for Defendants Jaime Andujo and Fundamental
Clinical Consulting, LLC*

Colin T. Cameron
Rubin, Katz Law Firm
Santa Fe, New Mexico

-- and --

Rick L. Brunner
Columbus, Ohio

*Attorney for Defendants Diana Melton, Jaime Andujo, Debbie Lothridge, and
Karen Hood (Miller)*